

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of) CC Docket No. 91-142
)
ALGREG CELLULAR ENGINEERING) File No. 10607-CL-P-311-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 307 - Alabama 1-Franklin)
)
CRANFORD CELLULAR COMMUNICATIONS) File No. 10611-CL-P-311-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 311 - Alabama 5-Cleburne)
)
NEW ERA CELLULAR)
TELE-COMMUNICATIONS) File No. 10563-CL-P-332-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 332 - Arkansas 9-Polk)
)
BAY CELLULAR OF FLORIDA) File No. 10754-CL-P-497-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A in)
Market 497 - Mississippi 5 - Washington)
)
FLORIDA CELLULAR) File No. 10445-CL-P-505-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 505 - Missouri 2-Harrison)
)
A-1 CELLULAR COMMUNICATIONS) File No. 10454-CL-P-514-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 514 - Missouri 11-Moniteau)
)
BRAVO CELLULAR) File No. 10673-CL-P-579-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A in)
Market 579 - North Carolina 15-Cabarrus)
)

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ALPHA CELLULAR) File No. 10909-CL-P-586-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 586 - Ohio 2-Sandusky)
)
CEL-TEL COMMUNICATIONS	) File No. 10912-CL-P-589-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 589 - Ohio 5-Hancock)
)
EJM CELLULAR PARTNERS	) File No. 10567-CL-P-596-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 596 - Oklahoma 1-Cimarron)
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PINELLAS COMMUNICATIONS) File No. 10808-CL-P-613-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 613 - Pennsylvania 2-McKean)
)
CENTAUR PARTNERSHIP	) File No. 10720-CL-P-631-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A in)
Market 631 - South Carolina 7-Calhoun)
)
SIGNAL CELLULAR COMMUNICATIONS	) File No. 10721-CL-P-632-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A in)
Market 632 - South Carolina 8 - Hampton)
)
A-1 CELLULAR COMMUNICATIONS	) File No. 10409-CL-P-661-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 661 - Texas 10-Navarro)
)
EJM CELLULAR PARTNERS	) File No. 10116-CL-P-721-A-89
)
For Facilities in the Domestic Public)
Cellular Telecommunications Radio)
Service on Frequency Block A)
in Market 721 - Wyoming 4-Niobrara)
)

JAYBAR COMMUNICATIONS	)	File No. 10042-CL-P-323-A-88
)	
For Facilities in the Domestic Public)	
Cellular Telecommunications Radio)	
Service on Frequency Block A)	
in Market 323 - Arizona 6-Graham for)	
Station KNKN 251)	
)	
DATA CELLULAR SYSTEMS	)	File Nos. 10029-CL-P-345-A-88
	)	07080-CL-P-MP-91
For Facilities in the Domestic Public)	
Cellular Telecommunications Radio)	
Service on Frequency Block A)	
in Market 345 - California 10-Sierra)	
for Station KNKN 250)	
)	
CELLULAR PACIFIC	)	File Nos. 10031-CL-P-346-A-88
	)	06606-CL-MP-90
For Facilities in the Domestic Public	)	06688-CL-MP-90
Cellular Telecommunications Radio)	
Service on Frequency Block A in)	
Market 346 - California 11-El Dorado)	
for Station KNKN 252)	
)	
NORTH AMERICAN CELLULAR	)	File No. 10066-CL-P-388-A-88
)	
For Facilities in the Domestic Public)	
Cellular Telecommunications Radio)	
Service on Frequency Block A in)	
Market 388 - Idaho 1-Boundary for)	
Station KNKN 253)	

TO: The Commission

SUPPLEMENT TO STATEMENT FOR THE RECORD

1. Castle Trust, Orbit Cellular, RSA Cellular Partners, Schuylkill Mobile Fone, Inc., Scott Reardon, Skyline Cellular Partners, Sunrise Trust, Walker Trust, and Turnpike Cellular Partners (collectively referred to herein as "Appellant-Petitioners") hereby provide this Supplement to the Statement for the Record submitted by them in the above-captioned matter on June 26, 1998. As indicated in the Appellant-Petitioners' Statement, the purpose of that Statement was to alert the Commission and all other parties to the Appellant-Petitioners' intention to participate in the still-pending proceedings before

the Commission.

2. By letter dated July 13, 1998, David L. Hill, counsel for Data Cellular Systems, Cellular Pacific and North American Cellular has accused Appellant-Petitioners of "wanting to join in . . . 'green mail' efforts" and filing a "frivolous, abusive" pleading. A copy of Mr. Hill's letter is included as Attachment A hereto. There is no basis for these charges. Undersigned counsel has not participated in and is not aware of any "green mail efforts" ^{1/}, nor can Appellant-Petitioners' Statement for the Record legitimately be characterized as either "abusive" or "frivolous". To the contrary, the Statement was a simple, unembroidered recitation of the Appellant-Petitioners' interest in this matter, an interest which arose with the filing of their applications and which continues to this day.

3. To the extent that Mr. Hill appears to view his clients as being in a class separate from the other captioned applicants (because Mr. Hill's clients' applications were granted before the hearing below was designated), that distinction was addressed at Footnote 2 of Appellant-Petitioners' Statement. To the extent that Mr. Hill asserts that Appellant-Petitioners' expressed concerns are "frivolous", Appellant-Petitioners merely note that neither the Common Carrier Bureau, nor the Presiding Administrative Law Judge,

^{1/} Appellant-Petitioners' goal is not "green mail". Rather, it is to assure the Appellant-Petitioners' ability to compete for licenses, in the markets for which they have applied, through appropriate auction processes untainted by improper side-deals and the like. This is not to say that Appellant-Petitioners would never engage in legitimate settlement discussions. Settlement is and should always be an option available to reasonable litigants.

nor the Review Board (twice) viewed the allegations of misconduct to be "frivolous". To the contrary, each of those decisionmakers concluded that substantial misconduct had occurred, misconduct warranting denial or revocation of licenses.

4. Since the Statement did not advance any new allegations -- indeed, Appellant-Petitioners specifically and expressly disclaimed any intention of seeking to add any factual or legal issues to the proceeding (see Statement at 7-8) -- it is difficult to understand exactly what Mr. Hill means when he charges that Appellant-Petitioners' Statement was "abusive". Similarly, his citation to K.O. Communications, Inc., DA 98-1342, released July 7, 1998, is equally mystifying. In that case, the Wireless Telecommunications Bureau stated that

"Abuse of process occurs when an improper threat is made to divulge information and invoke the Commission's processes unless another party accedes to some demands."

Id. at 15 (quoting Portland Cellular Partnership, 11 FCC Rcd 19997, 20012 (1997)). Here, the Appellant-Petitioners have made no threat at all, improper or otherwise. Moreover, the Appellant-Petitioners have made no "demands" of any sort. Mr. Hill's reliance on K.O. Communications, and his charges about "abusive" or "frivolous" pleadings, are completely unfounded. ^{2/}

^{2/} It also bears noting that the facts of K.O. Communications are completely distinct from those of the instant situation. In K.O. Communications, a party which had already raised, and then withdrawn (in connection with a \$1,000,000 settlement agreement), certain allegations, attempted to raise them again, even though those allegations had already been disposed of (with the party's concurrence through the settlement process) by the Commission's staff. Here, there is no prior history of allegations made and then withdrawn by Appellant-Petitioners; there is no history of a
(continued...)


5. Finally, in his letter Mr. Hill seems to accuse undersigned counsel of having willfully violated Section 1.52 of the Commission's Rules. That rule provides that counsel signing a pleading is certifying that he/she has read the pleading and that, to the best of his/her knowledge, information and belief, there is good cause to support it and it is not interposed for delay. Undersigned counsel hereby specifically affirms that he read the Appellant-Petitioners' Statement (in fact, undersigned counsel wrote that Statement) and, to the best of his knowledge, information and belief, there is good cause to support it and it is not interposed for delay. Indeed, as specifically stated in the Statement (at 7), the Appellant-Petitioners' approach is designed expressly to avoid any disruption or delay to this proceeding.

6. Appellant-Petitioners regret having to address these matters before the Commission. But, in view of the tone of Mr. Hill's letter -- including particularly the apparent threat to seek some finding of misconduct by undersigned counsel

^{2/}(...continued)
settlement agreement for any amount of money to Appellant-Petitioners; and, while the most recent decision on the underlying substantive matters here favored the captioned applicants, the four previous decisions did not. On that last point, the petitioning party in K.O. Communications appeared to be trying to re-open issues which had been previously resolved with the petitioners' concurrence; here, as clearly indicated in the Appellant-Petitioners' Statement, no final resolution of the issues has yet been reached, and the Appellant-Petitioners here have made clear their disagreement with the most recent decision in the matter. Any reliance by Mr. Hill on K.O. Communications is plainly misplaced.

personally ^{3/} -- undersigned counsel believes that it is appropriate to make Mr. Hill's position, and the instant response, a part of the record of this proceeding.

Respectfully submitted,


/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
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(202) 833-4190

Counsel for Appellant-Petitioners

July 23, 1998

^{3/} Mr. Hill's apparent threat itself seems to be the sort of improper conduct of which Mr. Hill inaccurately and unjustifiably accuses the Appellant-Petitioners (and their counsel). See, e.g., K.O. Communications, supra, at 15 ("Abuse of process occurs when an improper threat is made to . . . invoke the Commission's processes unless another party accedes to some demands").

ATTACHMENT A

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David L. Hill
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July 13, 1998

VIA TELECOPY AND MAIL

Harry F. Cole, Esquire
Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
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Re: Algreg Cellular Engineering, et al., CC Docket No. 91-142

Dear Mr. Cole:

On June 26, 1998, you filed with the Federal Communications Commission in the above matter a document entitled Statement For The Record on behalf of Castle Trust, Orbit Cellular, RSA Cellular Partners, Schuylkill Mobile Fone, Inc., Scott Reardon, Skyline Cellular Partners, Sunrise Trust, Walker Trust, and Turnpike Cellular Partners referred to collectively by you as "Appellant-Petitioners". We represent Data Cellular Systems, Cellular Pacific, and North American Cellular (LICENSEES), that were subject to the show cause order in the original Algreg proceeding.

You claim that the purpose of the Statement is to advise the Commission and the parties to the proceeding that Appellant-Petitioners will not seek Supreme Court review of the dismissal by the Court of Appeals of Appellant-Petitioners' appeal. While such a statement is unnecessary and not provided for in the rules, if that were its true purpose, we would not find it objectionable. However, at page 7 you announced without claim of any authority, rule, statute or case precedence, that the "Appellant-Petitioners have elected to participate in the still pending proceedings before the Commission by joining in and adopting (by incorporation herein) the issues set forth in the two petitions for reconsideration already pending."

This intervention by fiat while novel is inconsistent with the clear requirements of the Commission's procedural rules. Section 1.223(c) requires that any persons seeking to file for leave to intervene later than 30 days after the publication in the Federal Register of the Designation Order must set forth reasons why it was not possible to file a petition within the thirty days prescribed in the rules. Only in passing in a footnote do you, assuming arguendo such leave is required, seek such leave by merely claiming that good cause exists with no analysis of

Harry F. Cole, Esquire
July 13, 1998
Page 2

the facts to support such a claim. Likewise, no attempt is made to address the requirements of Section 1.106(b)(1) in connection with late filed petitions for reconsideration.

The Appellant-Petitioners did not seek to intervene in the show cause portion of the Algrog proceeding with respect to the LICENSEES in 1991 when the hearing order was released. Instead, they elected to do nothing until July 1997, after the Commission released its Order disposing of applications for review and terminating the show cause proceeding as to the LICENSEES, when Notices of Appeal were filed with the Court of Appeals. The LICENSEES along with the other applicant and licensee parties filed a Motion to Dismiss the appeal which the Court granted. Not being content with the Court's disposition of their Appeal, Appellant Petitioners sought re-hearing which was also denied.

Having lost twice, but still wanting to join in the "green mail" efforts that have long existed as undercurrents in this proceeding, Appellant-Petitioners have by your June 26th submission simply proclaimed they are parties to the proceeding without reference to any rule or case authority. At least as to the LICENSEES, there is no basis for intervention. Assuming that each of the Appellant-Petitioners filed an application for those particular markets, those applications were dismissed years ago. That dismissal became final and nonappealable long before even your efforts to seek judicial review were undertaken. The Review Board limited the participation of a timely applicant intervenor to the application portion of the proceeding. The law of the case therefore precludes Appellant-Petitioners from participating in the show cause portion of the proceeding, including any post hearing review.

In signing the June 26, 1998 Statement for The Record, you as counsel for the Appellant-Petitioners pursuant to Section 1.52 of the Commission's rules certified that you read the document; to the best of your knowledge, information and belief there is good cause to support it; and it is not interposed for delay. Yet the facts demonstrate no support for the Statement. Willful violation of the requirements of Section 1.52 may subject an attorney to appropriate disciplinary action pursuant to Section 1.24 of the Commission's rules. Thus, if you do not withdraw immediately your Statement For The Record, we will move to strike this frivolous, abusive filing. See, K.O. Communications, Inc., Memorandum Opinion and Order, released July 7, 1998, DA98-1342.

Very truly yours,



David L. Hill

DLH/lap

CERTIFICATE OF SERVICE

Harry F. Cole hereby certifies that on this 23rd day of July, 1998, I caused copies of the foregoing "Supplement to Statement for the Record" to be hand- delivered (as indicated below) or sent via U.S. first class mail, postage prepaid, addressed to the following:

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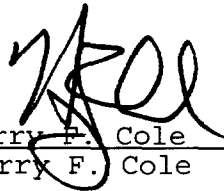
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/s/ 
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